

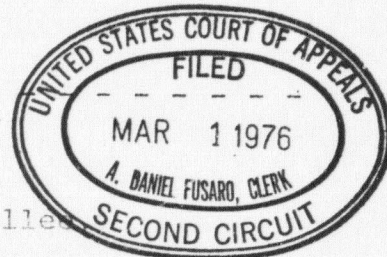
***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7692

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



MILTON RAFFER,

Plaintiff-Appellee

-against-

ROY M. COHN, THOMAS A. BOLAN, SCOTT E.
MANLEY, DANIEL J. DRISCOLL, MELVIN RUBIN,
MICHAEL ROSEN and HAROLD L. SCHWARTZ,
members of the law firm of SAXE, BACON
and BOLAN,

Defendants,

SAXE, BACON & BOLAN, ROY M. COHN, MICHAEL
ROSEN, DANIEL J. DRISCOLL, and SCOTT E.
MANLEY,

Defendants-Appellants.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Rippa, Lang, Nesci & O'Toole
Attorneys for Defendants-
Appellants
271 North Avenue
New Rochelle, New York 10801

PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
 UNITED STATES DISTRICT COURT

1a

Jury demand date:

U. S. Rev.

TITLE OF CASE

ATTORNEYS

For plaintiff:

MILTON M. P. WILK

ROSE M. COHEN

THOMAS A. COHEN

SCOTT E. COHEN

DANIEL J. DRISCOLL

MELVYN RUBIN

MICHAEL ROSEN et al

HAROLD L. SCHWARTZ, President of the
 Law Firm of Saxe, Bacon and Brown

For defendant:

Saxe, Bacon, Solman & Family
 12 East 38th St
 New York City 10021 672-1400

STATISTICAL RECORD

COSTS

DATE

NAME OR
 RECEIPT NO.

REC.

FILED

mailed X

Clerk

MAR 1 1974

mailed

Marshal

Action:

Docket fee

Witness fees

arose at:

Depositions

ON M. FARBER, A. ROY M. LOHN

PROCEEDINGS

Motion, complaint and issued summons.

Filed summons & cert. marshal's ret. served on:

- (1) Roy M. Cohn by T. Bolan, Esq. on 3/13/74,
- (2) Harold L. Schwartz by T. Bolan, Esq. on 3/13/74,
- (3) Daniel J. Driscoll unexecuted 3/27/74,
- (4) Scott E. Manley by T. Bolan, Esq. on 3/13/74,
- (5) Thomas Bolan by wife on 3/13/74.

4 Filed ANSWER of Defts Roy M. Cohn, Thomas A. Bolan, Scott E. Manley,

Michael Rosen and Harold L. Schwartz to the complaint.

4 Filed pliff.'s Interrogs. to defts.

PRE-TRIAL

PRE-TRIAL CONFERENCE HELD BY

Trial before Magliardi, I. with non-jury.

Began

Trial concluded. Decision by Judge in favor of pliff in sum of \$12,528.03.

Pliff to submit judgment.

JUDGMENT ENTERED BY JUDGE MAGLIARDI, I.

Filed JUDGMENT 125,801. Pliff recover on Count 1 of complaint against defts
 Same, Reason Bolan; Roy M. Cohn, Michael Rosen; Daniel J. Driscoll; Scott E. Manley,
 jointly severally, sum of \$10,000.00, etc. to total of \$12,528.03; ordered that
 Count 1 is dismissed as to defts. Melvyn Rubin; Harold L. Schwartz; Thomas Bolan.
 Ordered that 2nd count of complaint is dismissed. Magliardi, I.

Judgment entered Clerk (mm).

Date 11/17/75

Filed Notice of Appeal from Judgment of Hon. J. P. Magliardi of 11/17/75.
 From each and every party except as for as said Judgment is final and
 of Complaint as to all defendants and Mandate Count 1 of Complaint as
 against defts Melvyn Rubin, Harold L. Schwartz, Thomas A. Bolan. Chaired 199
 to Franklin, Cohen, Falkin on 12/16/75.

A. FINE CO.

12/16/75

M. C. Fine

12-23-75
A. Fine

MILTON W. RAFFER,

Plaintiff

74 Civ. 1125

JUDGMENT

15,891

ROY M. COHN, THOMAS A. BOLAN,
 SCOTT E. MANLEY, DANIEL J. DRISCOLL,
 MELVYN RUBIN, MICHAEL ROSEN and
 HAROLD L. SCHWARTZ, Members of the
 FIRM OF SAXE, BACON and BOLAN

Defendants

This action came on for trial before the Court,
 Honorable Leo Gagliardi, D.J., presiding, and the issues having
 been duly tried, and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff,
 Milton Raffer, recover on Count One of the Complaint against the
 defendants, Saxe, Bacon and Bolan, a partnership, and Roy M. Cohn,
 Michael Rosen, Daniel J. Driscoll, and Scott E. Manley, jointly
 and severally, the sum of \$10,000.00 for the fees heretofore
 paid by the plaintiff to the defendants, plus \$1,028.03 for the
 printing costs paid by the plaintiff, plus \$2500.00 legal fees
 paid for application for reinstatement of Appeal, for an aggregate
 sum of \$13,528.03, together with interest thereon to be
 calculated from the date of each of the aforesaid payments.

It is further Ordered and Adjudged that Count One
 is dismissed as to the defendants, Melvyn Rubin and Harold L.
 Schwartz,

It is further Ordered and Adjudged that the Second
 Count of the Complaint be and the same is hereby dismissed.

Dated November 3, 1975, at New York, New York.

[Signature]
 Clerk of the Court

JUDGMENT ENTERED - 1/14/76

[Signature]
 Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

4a

MILTON RAFFER,

Plaintiff,

- against -

74 Civ. 1125
(LGF)

ROY M. COHN, THOMAS A. BOLAN, SCOTT E.
MANLEY, DANIEL J. DRISCOLL, MELVYN
RUBIN, MICHAEL ROSEN and HAROLD L.
SCHWARTZ, Members of the Law Firm
of SAXE BACON and BOLAN,

NOTICE OF APPEAL

Defendants.

-X

S I R S :

PLEASE TAKE NOTICE that the defendants, Saxe, Bacon & Bolan, Roy M. Cohn, Michael Rosen, Daniel J. Driscoll and Scott E. Manley, hereby appeal to the United States Court of Appeals for the Second Circuit from the verdict and judgment of the Hon. Lee P. Gagliardi, Judge of the United States District Court for the Southern District of New York, entered in the office of the Clerk on November 14, 1975, and from each and every part thereof except so far as said judgment dismisses the Second Count of the Complaint as to all defendants and except so far as said judgment dismisses Count One of the Complaint as against the defendants Melvyn Rubin, Harold L. Schwartz and Thomas A. Bolan.

Dated: New York, New York
December 11, 1975

Yours, etc.,

RIPPA, LANG, NESCI & O'TOOLE
~~Attorneys for Defendants~~

New Rochelle, New York

TO: FRANKELAU, COHEN & FALKIN
Attorneys for Plaintiff
1120 Raymond Blvd.
Newark, New Jersey

United States District Court

FOR THE

5a

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

74 Civ 1125

MILTON M. RAFFER

Plaintiff,

vs.

ROY M. COHN, THOMAS A. BOLAN, SCOTT E.
MANLEY, DANIEL J. DRISCOLL, MELVYN RUBIN,
MICHAEL ROSEN, AND HAROLD L. SCHWARTZ,
members of the law firm of Saxe, Bacon and
Bolan

~~Plaintiff~~

Defendants

SUMMONS

Judge Bagliardi

To the above named Defendants :

You are hereby summoned and required to serve upon

PASTERNAK, CIACCIO & BURTON, P.C., Of Counsel to S.M. CHRIS
FRANZBLAU and SAM WEISS, ESQS.,

plaintiff's attorney, whose address is 299 Broadway, New York, New York 10007

an answer to the complaint which is herewith served upon you, within 30 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Raymond F. Burghardt
Clerk of Court.
B. Edwards
Deputy Clerk.

Date:

March 11, 1974

[Seal of Court]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

MILTON M. RAFFER :
Plaintiff :
vs. : Civil Action
File No.
ROY M. COHN, THOMAS A. BOLAN, :
SCOTT E. MANLEY, DANIEL J. :
DRISCOLL, MELVYN RUBIN, : COMPLAINT
MICHAEL ROSEN, and HAROLD L. :
SCHWARTZ, members of the :
law firm of SAXE, BACON and :
BOLAN, :
Defendants :

The plaintiff, Milton M. Raffer, residing at
2150, Center Avenue, Fort Lee, New Jersey, says:

FIRST COUNT

1. The ground upon which the jurisdiction of
the Court depends is diversity of citizenship between the
parties hereto, and the amount in controversy herein exceeds
ten thousand dollars, exclusive of interest and costs.
Plaintiff is a citizen of the State of New Jersey, and
defendants are citizens of the State of New York.

2. On October 7, 1971, the plaintiff was
convicted in this Court of various federal offenses, and,
on November 11, 1971, was sentenced to one year imprisonment
and fined \$20,000.00.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

MILTON M. RAFFER :
Plaintiff :
vs. : Civil Action
File No.
ROY M. COHN, THOMAS A. BOLAN, :
SCOTT E. MANLEY, DANIEL J. :
DRISCOLL, MELVYN RUBIN, : COMPLAINT
MICHAEL ROSEN, and HAROLD L. :
SCHWARTZ, members of the :
law firm of SAXE, BACON and :
BOLAN, :
Defendants :

The plaintiff, Milton M. Raffer, residing at
2150, Center Avenue, Fort Lee, New Jersey, says:

FIRST COUNT

1. The ground upon which the jurisdiction of
the Court depends is diversity of citizenship between the
parties hereto, and the amount in controversy herein exceeds
ten thousand dollars, exclusive of interest and costs.

Plaintiff is a citizen of the State of New Jersey, and
defendants are citizens of the State of New York.

2. On October 7, 1971, the plaintiff was
convicted in this Court of various federal offenses, and,
on November 11, 1971, was sentenced to one year imprisonment
and fined \$20,000.00.

3. On or about October 27, 1971, the 7a
plaintiff retained the services of defendant, Roy M. Cohn,
a member of the law firm of Saxe, Bacon and Bolan of New York
City, and the services of the defendants, Thomas A. Bolan,
Scott E. Manley, Daniel J. Driscoll, Melvyn Rubin,
Michael Rosen and Harold L. Schwartz, members of the said

law firm of Saxe, Bacon and Bolan, to prosecute and perfect an appeal to
the United States Court of Appeals for the Second Circuit from said conviction.

3a. That subsequent to this retention defendants and more
particularly defendant ROY M. COHN, obtained, or advised plaintiff that he
had obtained, the transcript of the minutes of the trial that resulted in plaintiff
conviction.

3b. That subsequent to this retention, the defendants and
more particularly, defendant ROY M. COHN, advised plaintiff that he had
reviewed the transcript of the minutes of the trial and advised plaintiff that
he had a good, just and meritorious grounds for reversal of conviction and
should appeal and that said appeal would be prosecuted successfully.

4. By reason of the negligence of the defendants, and each
of them, the said appeal was not timely perfected and was dismissed.

5. For the purpose of prosecuting the appeal, there had been
paid to the defendant ROY M. COHN, the sum of \$10,000.00 as an attorney's
fee, plus the sum of \$1,028.03 for disbursements.

6. Thereafter, the plaintiff served out his prison term, and
after his release, engaged the New Jersey law firm of Beckerman, Franzblau
and Cohen, Esqs., to seek reinstatement of the appeal so that it could be
heard on the merits. The New Jersey law firm succeeded in obtaining rein-
statement of the appeal, which was thereafter perfected and resulted in an
affirmance of the conviction.

7. As a result of the negligence of the defendants, it was
necessary for the plaintiff to incur additional legal expenses of \$5,000.00,
plus disbursements in the sum of \$1,055.48, in obtaining the reinstatement

WHEREFORE, plaintiff demands judgment against the defendant-
8a
dents and each of them in the sum of \$17,082.51, together with interest and costs

SECOND COUNT

1. The plaintiff repeats each and every allegation of the First Count.

2. The defendant ROY M. COHN, repeatedly assured and reassured the plaintiff that the appeal was being fully prosecuted and would be fully prosecuted to completion, but never advised the plaintiff that the appeal had not been timely perfected or that it had been dismissed. The plaintiff did not know that the appeal had been dismissed until after his release from imprisonment, i.e., he ascertained that fact on or about April 2, 1973. Until then, the plaintiff had been under the impression that the appeal had proceeded to completion and was lost on the merits.

3. The defendant, Roy M. Cohn, received and retained the sum of \$10,000.00 as attorney's fee, plus the said sum of \$1,028.03 for disbursements, with intent to deceive the plaintiff, in violation of Section 487 of the Judiciary Law of New York.

WHEREFORE, the plaintiff demands judgment against the defendant, Roy M. Cohn, in the sum of \$17,083.51, trebled in accordance with Section 487 of the Judiciary Law of New York, together with interest and costs.

PASTERNAK, CIACCIO AND BURTON, P.C.
Attorneys for Plaintiff

BY: Lowell Burton

LOWELL BURTON

Dated : December 27, 1973

Chris Franzblau
S. M. CHRIS FRANZBLAU
Of Counsel (Member of New Jersey Bar)

-----X

MILTON M. RAFFER,	:	
	:	
Plaintiff,	:	<u>ANSWER</u>
	:	
- against -	:	
	:	74 Civ. 1125
ROY M. COHN, THOMAS A. BOLAN, SCOTT E.	:	
MANLEY, DANIEL J. DRISCOLL, MELVYN	:	(L.P.G.)
RUBIN, MICHAEL ROSEN and HAROLD L.	:	
SCHWARTZ, members of the law firm of	:	
SAXE, BACON and BOLAN,	:	
	:	
Defendants.	:	

-----X

Defendants Roy M. Cohn, Thomas A. Bolan, Scott E. Manley, Michael Rosen and Harold L. Schwartz as and for their answer to the complaint respectfully allege:

AS TO THE FIRST COUNT
OF THE COMPLAINT:

1. Deny that diversity of citizenship exists between the plaintiff and all the defendants, in that not all the defendants are citizens of the State of New York as alleged in Paragraph "1" of the complaint.
2. Admit the allegations contained in Paragraph "2" of the complaint.
3. Deny each and every allegation contained in Paragraph "3", and its subparagraphs, of the complaint.
4. Deny each and every allegation contained in Paragraphs "4" and "5" of the complaint.
5. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "6" of the complaint, except admit that plaintiff's conviction was affirmed by the United States Court of Appeals for the Second Circuit.

6. Deny each and every allegation contained in Paragraph "7" of the complaint. 10a

AS TO THE SECOND COUNT
OF THE COMPLAINT:

7. Defendants repeat and reallege each and every denial and answer heretofore imposed to Paragraphs "1" through "7" of the first count of the complaint.

8. Deny each and every allegation contained in Paragraph "2" of the second count of the complaint.

9. Deny each and every allegation contained in Paragraph "3" of the second count of the complaint.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE:

10. This court lacks jurisdiction on the grounds that diversity does not exist between the plaintiff and all of the defendants.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE ON BEHALF OF ROY M. COHN:

11. Defendant Roy M. Cohn is not a member of the firm of Saxe, Bacon & Bolan.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE ON BEHALF OF HAROLD L.
SCHWARTZ.

12. Defendant Harold L. Schwartz has been and is presently a citizen of the State of New Jersey.

13. Defendant Harold L. Schwartz is not a member of the firm of Saxe, Bacon & Bolan and had no connection with the transactions alleged in the complaint.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE ON BEHALF OF SCOTT E.
MANLEY:

14. Defendant Scott E. Manley had no connection with the transactions alleged in the complaint.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE ON BEHALF OF THOMAS A.
BOLAN:

15. Defendant Thomas A. Bolan had no connection with any of the transactions alleged in the complaint.

AS AND FOR A FIRST COMPLETE,
SEPARATE AND AFFIRMATIVE DE-
FENSE ON BEHALF OF MICHAEL
ROSEN:

16. Defendant Michael Rosen was not a member of the firm of Saxe, Bacon & Bolan.

WHEREFORE, defendants demand judgment dismissing the complaint, together with costs and disbursements of this action.

SAXE, BACON, BOLAN & MANLEY
Attorneys for Defendants
Office & P.O. Address:
39 East 68th Street
New York, New York 10021
(212) 472-1400

By [Signature]

TO: PASTERNAK, CIACCIO AND BURTON, P.C., ESQS.
Attorneys for Plaintiff
299 Broadway
New York, New York 10007

1 WC

Raffer - cross

50

2 MR. LANG: Do you have a copy?

3 MR. FRANZBLAU: We never got it.

4 MR. LANG: Here is a copy (handing).

5 Page 6, line 17.

6 MR. FRANZBLAU: I think the witness should be
7 entitled to look at a copy of the deposition, your Honor.

8 THE COURT: It is not necessary, no.

9 MR. FRANZBLAU: Page 6?

10 MR. LANG: Yes, line 17.

11 Q "Q Could you tell us, Mr. Raffer, who it was
12 that you retained at this firm? Was it the firm or was it
13 Mr. Cohn or who was it?

14 "A To the best of my knowledge, it was Roy Cohn.

15 "Q So you did not retain the firm of Saxe,
16 Bacon & Bolan, did you?"17 There was an objection by the attorney, Mr. Rosen,
18 who was conducting -- he says he can answer that -- and the
19 question is "If you know," on page 7.20 "A No, to the best of my knowledge, all I
21 remember retaining was Roy Cohn."22 Do you remember being asked those questions and
23 giving those answers in February 1975?24 A I don't recall at this moment, unless you aren't
25 reading it correctly, those are the answers I gave four years

wc

Raffer - cross

57

MR. FRANZBLAU: Very good.

MR. ROSEN: I see.

THE COURT: You are going to be there at 2 o'clock, aren't you?

MR. ROSEN: Yes, sir.

THE COURT: You have to be there at 2 o'clock?

MR. ROSEN: Yes.

THE COURT: You are going to get out of here at twenty to 1. I thought you understood.

MR. ROSEN: No, Judge.

THE COURT: All right.

(Defendants' Exhibit B was received in evidence.)

Q Mr. Raffer, isn't it a fact that you never made any arrangements with anyone else at the firm of Saxe, Bacon & Bolan other than Roy M. Cohn as to doing the work for your appeal? Isn't that correct?

A Yes, sir.

Q You gave the money for the fee to Roy Cohn, the \$10,000, you testified in checks; right?

A Yes.

Q Did you ever once ask Mr. Cohn for that money back after you found out about the appeal?

A No, sir.

Q Isn't it a fact, Mr. Raffer, that you yourself have

1 WC

70

2 the only one Mr. Raffer retained, your Honor, was Roy M. Cohn
3 and that these other members he did not retain. And he did
4 not retain the firm either, your Honor.

5 THE COURT: He testified on his direct examination
6 that he retained both Mr. Cohn and the firm.

7 MR. LANG: If your Honor recalls, though, I asked
8 him on cross and went over his EBT --

9 THE COURT: I know, but there is testimony on his
10 direct that he did retain both.

11 MR. LANG: Right. But what I am saying, your Honor,
12 is that he then said on his cross that he did not retain it,
13 he just retained Roy M. Cohn.

14 THE COURT: No, you have got him saying in an
15 examination before trial or deposition that he made a
16 contrary statement.

17 MR. LANG: Right. And he said if those statements
18 are there, they were true.

19 THE COURT: They were made. He said they were made.

20 MR. LANG: Or they were made.

21 THE COURT: The thing that disturbs me, Mr. Franz-
22 blau, insofar as the firm is concerned, is that there has been
23 no proof about the firm or anything else about it, as to the
24 members of the firm, and so forth.

25 MR. FRANZBLAU: If your Honor please, may I

1 we Rosen - direct
2 the criminal trial. And my conversations with Mr. Raffer
3 were basically getting all the materials that I needed to
4 work with, parts of the transcript, etc.

5 Mr. Raffer also, I believe, at the initial conver-
6 sation had indicated to me that he was thankful or grateful
7 that Mr. Cohn was going to undertake to get the brief out;
8 that part of the price, though, was that he had to make good
9 some \$5,000 worth of checks that his son Bennett had bounced
10 on the firm. I believe he told me that the fee was \$5,000
11 plus whatever the costs were, and that he was just grateful
12 that Mr. Cohn was going to either put together the brief or
13 I think argue the appeal for him. I think that is what he
14 told me he came to Mr. Cohn for.

15 Q When you say --

16 MR. FRANZBLAU: Wait a minute. If your Honor please,
17 I move to strike that answer, because it relates to a great
18 deal of hearsay evidence, which would not have been in the
19 knowledge of Raffer or Roy Cohn.

20 THE COURT: No, he is relating either the conversa-
21 tion or the substance of it, as I understand.

22 MR. FRANZBLAU: But, your Honor, it is double
23 hearsay as to what may have transpired with the checks of
24 Bennett Raffer.

25 THE COURT: I will permit it.

1 we

2 sufficient to warrant a recovery under section 487 of the
3 Judiciary Law, and I will grant the motion to dismiss that
4 cause of action.

5 Now we have a little housekeeping to do here. You
6 have sued Mr. Cohn, and I would find that under the circum-
7 stances of this case he individually and as a member of the
8 firm of Saxe, Bacon & Bolan is a proper defendant. Mr. Bolan
9 is presumably of counsel, Mr. Franzblau. Do you want to be
10 heard on that?

11 MR. FRANZBLAU: No.

12 THE COURT: Dismissed as to Mr. Bolan.

13 Mr. Manley: I think there is proof here that he
14 was a member of the firm, and Mr. Driscoll, a member of the
15 firm.

16 Mr. Rubin and Mr. Rosen at the time complained of
17 here were associates?

18 MR. FRANZBLAU: Yes, your Honor.

19 THE COURT: And motion to dismiss as to them is
20 granted.

21 MR. FRANZBLAU: May I be heard on that, your Honor?

22 THE COURT: Yes.

23 MR. FRANZBLAU: If your Honor please, the mere
24 fact that they both worked on the brief -- there is testimony
25 they both worked on the brief -- so that the mere fact that

1 WC

2 was no willful intent as defined in section 487 of the
3 Judiciary Law to warrant a recovery pursuant to the provisions
4 of section 487.

5 In sum, I find for the plaintiff in the first
6 cause of action against all defendants remaining in the sum
7 of \$13,528.03, together with interest from the date of
8 payment --

9 MR. WEISS: Would your Honor please clarify the
10 phrase "all defendants remaining"?

11 MR. FRANZBLAU: May I say before --

12 THE COURT: Just a moment. -- with interest from
13 the date on which the plaintiff made those payments.

14 The remaining defendants, as I believe they stand
15 before the Court, are Roy M. Cohn, Scott E. Manley, Daniel J.
16 Driscoll, Michael Rosen, and the firm of Saxe, Bacon &
17 Bolan.

18 The foregoing constitutes the findings of fact and
19 conclusions of law. The clerk may accordingly enter judgment
20 in accordance with this decision.

21 MR. FRANZBLAU: If your Honor please, I just want
22 to invite your attention to the fact I checked in the clerk's
23 office and found that in fact Mr. Rubin had not been served.
24 But it is moot.

25 THE COURT: I did not direct judgment against him.